

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

MICHELLE R. KAPLAN and	)	
MARK D. KAPLAN,	)	
	)	
Plaintiffs	)	
	)	Case No. 1:14-cv-00276-DBH
v.	)	
	)	
BLUE HILL MEMORIAL HOSPITAL,	)	
	)	
Defendant	)	

**DEFENDANT’S MOTION FOR LEAVE TO AMEND ANSWER  
AND ADDITIONAL DEFENSES AND FILE COUNTERCLAIM**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Defendant Blue Hill Memorial Hospital (hereinafter “Defendant”), hereby moves to amend its Answer to Plaintiffs’ First Amended Complaint and Additional Defenses to include one Additional Defense and a Counterclaim. As grounds for this Motion, Defendant asserts as follows:

1. This is an exceedingly complex case. Discovery is now underway and must be completed on or before September 13, 2016.

2. The factual basis for Defendant’s First Amended Answer, Additional Defenses and Counterclaim was uncovered by means of an extensive investigation into historical events occurring at Down East Community Hospital (“DECH”) during Dr. Kaplan’s long tenure in its Emergency Room. Defendant’s investigation was made especially difficult by confidentiality concerns and fear of litigation on behalf of third parties with knowledge of relevant events.

3. The key piece of information, without which this motion for leave could not have been brought consistent with our Bar Rules, namely, the identity of Physician A in the March 18, 2009 Centers for Medicare and Medicaid Services (“CMS”) survey, was first sought directly from Plaintiff Dr. Mark Kaplan by means of Requests for Admission, which Requests were

denied by Dr. Kaplan by Response dated March 8, 2016. A copy of Dr. Kaplan's Response denying his identity as Physician A in the October 3, 2008 DECH Emergency Room incident is attached hereto as **Exhibit A**.

4. In the days since receiving Dr. Kaplan's Response to Defendant's Requests for Admission, counsel for Defendant has obtained information which in his judgment allows the requested amendment consistent with ethical obligations.

Accordingly, Defendant now seeks leave to amend its Answer and Additional Defenses to assert one Additional Defense as well as a Counterclaim in the form attached hereto as **Exhibit B**.

Rule 15 of the Federal Rules of Civil Procedure provides for the amendment of pleadings with leave of Court and specifically states that leave shall be freely given when justice so requires. Based on the circumstances set forth above as well as in Defendant's First Amended Answer, Additional Defenses and Counterclaim, Defendant respectfully suggests that justice requires its Motion be granted.

Dated at Bangor, Maine this 25<sup>th</sup> day of March, 2016.

Respectfully submitted,

BLUE HILL MEMORIAL HOSPITAL

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 25, 2016, I electronically filed the foregoing Motion for Leave to Amend Answer and Additional Defenses and File Counterclaim with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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